



7020-02

**INTERNATIONAL TRADE COMMISSION**

**CERTAIN VARIABLE SPEED WIND TURBINES AND COMPONENTS THEREOF**

**Investigation No. 337-TA-641 (Remand)**

**COMMISSION DETERMINATION TO GRANT A JOINT MOTION TO TERMINATE  
THE INVESTIGATION ON THE BASIS OF A SETTLEMENT AGREEMENT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint motion to terminate the investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the original investigation on March 31, 2008, based upon a complaint filed on behalf of General Electric of Fairfield, Connecticut (“GE”) on February 7, 2008. 73 *Fed. Reg.* 16910. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringe claims 121-125 of U.S. Patent No. 5,083,039 (“the ‘039 patent”) and claims 1-12, 15-18, and 21-28 of U.S. Patent No. 6,921,985 (“the ‘985 patent”). The complaint named as respondents Mitsubishi Heavy Industries, Ltd. of Tokyo, Japan and Mitsubishi Power Systems, Inc. of Lake Mary, Florida (collectively, “Mitsubishi”), and a third entity which was subsequently found not to import. On October 8, 2008, the Commission issued notice of its determination not to review an initial determination (“ID”) (Order No. 10) granting GE’s motion to amend its complaint and the notice of investigation to add claims 1-19 of United States Patent No. 7,321,221 (“the ‘221 patent”) to the investigation.

On August 7, 2009, the ALJ issued his final ID finding a violation of section 337. The ALJ found a violation of section 337 with respect to the ‘039 patent and the ‘985 patent but not the ‘221 patent.

On January 8, 2010, the Commission issued notice of its final determination of no violation of section 337 as to all of these patents. With respect to the ‘985 patent, the Commission found that GE failed to satisfy the technical prong of the domestic industry requirement.

GE filed an appeal with the U.S. Court of Appeals for the Federal Circuit. On motion by the Commission, the Court dismissed the appeal as to the '039 patent and thereby vacated as moot the Commission determination as to that patent. Subsequently, the Court affirmed the Commission's determination as to the '221 patent, and reversed the Commission's determination that GE had not satisfied the domestic industry requirement as to the '985 patent. The opinion originally issued by the Court contained a further Part III, which commented on the Commission's authority to take no position on an issue pursuant to *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421 (Fed. Cir. 1984). Subsequently, the panel granted a petition for rehearing, withdrawing Part III of its Opinion. *General Electric Co. v. Int'l Trade Comm'n*, Order, 692 F.3d 1218 (Fed. Cir. 2012).

The Federal Circuit issued its mandate on August 27, 2012. Subsequently, the Commission received numerous unsolicited submissions from the parties concerning the merits of the remand. The Commission also received a motion for sanctions by Mitsubishi against GE, a response thereto by GE, and motions for leave to file a reply and surreply.

On January 2, 2014, GE and Mitsubishi filed a joint motion to terminate the investigation on the basis of a settlement agreement pursuant to Commission rule 210.21(b), 19 C.F.R. § 210.21(b). The parties stated that termination is in the interest of the public and administrative economy. On January 27, 2014, the Office of Unfair Import Investigations ("OUII") filed a response in opposition, stating that the public version of the settlement agreement was overly redacted. On February 7, 2014, the parties re-submitted the public version of the settlement agreement. On the same day, OUII wrote a letter to the Secretary to the Commission, withdrawing its opposition.

After considering the joint motion, and the settlement agreement, the Commission agrees that the joint motion to terminate is in the interest of the public, and complies with the requirements of Commission rule 210.21(b). The Commission has therefore determined to grant the motion to terminate the investigation on the basis of a settlement agreement and to dismiss the motion for sanctions. The Commission has further determined to dismiss as moot the private parties' motions for leave to file a reply and to file a surreply and to not accept for filing any submissions not previously accepted given that the case has been mooted by settlement. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton

Acting Secretary to the Commission

Issued: April 18, 2014